

**UNITED STATES DISTRICT COURT
MIDDLE DISTRICT OF TENNESSEE
NASHVILLE DIVISION**

**JAMES ELLIOTT and
TERESA GUILER,**

Plaintiffs,

v.

**CITY OF CLARKSVILLE, CHIEF MARK
SMITH, AGENT DONNIE ROBBINS,
SERGEANT DONALD GIPSON, OFFICER
BRET NORFLEET, AGENT FRED
MCCLINTOCK, AGENT JAMISON WIROLL,
AGENT DAVID O'DELL, SERGEANT
BERT CLINARD, DETECTIVE TY
BURDINE, OFFICER JIM KNOLL,
SERGEANT DAVID CROCKARELL,
SERGEANT JAMES SMITH, SERGEANT
JOHNNY FERGUSON,**

Defendants.

**No. 3:05-0138
JUDGE ECHOLS**

ORDER

For the reasons stated in the Memorandum entered contemporaneously herewith, the Court rules as follows:

(1) Plaintiff's Motion For Partial Summary Judgment (Docket Entry No. 98) is hereby GRANTED.

(2) Defendants' Motion to Strike (Docket Entry No. 119) is hereby DENIED.

(3) Individual Defendants' Motion For Summary Judgment (Docket Entry No. 103) is hereby GRANTED IN PART and DENIED IN PART:

(a) The Motion is GRANTED with respect to Defendants Bret Norfleet, David O'Dell, Charles Burdine, Jim Knoll, David Crockarell, James Smith, and Johnny

Ferguson on Plaintiffs' claims for illegal search and seizure stated in Count II of the Amended Complaint. The Motion is DENIED with respect to Defendants Donnie Robbins, Bert Clinard, Jamison Wiroll, Fred McClintock and Donald Gipson on Plaintiffs' claims for illegal search and seizure stated in Count II of the Amended Complaint.

(b) The Motion is GRANTED with respect to Defendant Knoll's motion for summary judgment on Plaintiff Elliott's claim for illegal search and seizure stated in Count III of the Amended Complaint.

(c) The Motion is GRANTED with respect to Defendants Robbins, Gipson, Wiroll, Burdine, Knoll, Crockarell, Smith, and Ferguson on the excessive force claim stated in Count IV.

(d) The Motion is GRANTED with respect to Gipson, Wiroll, Burdine, Knoll, Crockarell, Smith, and Ferguson on the assault and battery claims stated in Count V.

(4) Counts III, IV and V are hereby DISMISSED WITH PREJUDICE.


(5) Defendants Bret Norfleet, David O'Dell, Charles Burdine, Jim Knoll, David Crockarell, James Smith, and Johnny Ferguson are hereby DISMISSED FROM THIS SUIT WITH PREJUDICE.

(6) The Motion For Summary Judgment filed by Defendants City of Clarksville and Chief Mark Smith (Docket Entry No. 106) is hereby GRANTED IN PART and DENIED IN PART. The Motion is GRANTED in that Plaintiffs may not proceed on a ratification theory. The Motion is DENIED in that Plaintiffs may proceed against the City and Chief Smith on the failure-to-train claim.

(7) Remaining for trial are Plaintiffs' Fourth Amendment claims for illegal search and seizure stated in Count II against Robbins, Clinard, Gipson, Wiroll and McClintock, and Plaintiffs' failure-to-train claim brought against the City and Chief Smith.

(8) Counsel for the parties shall attend the final pretrial conference on **Monday, February 26, 2007, at 2:30 p.m.** and the jury trial on **Tuesday, March 20, 2007, beginning at 9:00 a.m.**, as previously scheduled.

IT IS SO ORDERED.

A handwritten signature in black ink, appearing to read "Robert L. Echols", is written over a horizontal line.

ROBERT L. ECHOLS
UNITED STATES DISTRICT JUDGE